

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

REBECCA VLASEK,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. H-07-0386
	§	
WAL-MART STORES, INC., <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER GRANTING MOTION TO STRIKE AMENDED COMPLAINT

In this employment dispute, the plaintiff, Rebecca Vlasek, filed her complaint on January 29, 2007. The defendants, Wal-Mart Stores, Inc. and Sam's East, Inc., answered on February 15, 2007. On April 5, 2007, Vlasek amended her complaint, without seeking leave of court. Defendants have moved to strike on the ground that Vlasek failed to comply with Rule 15(a) of the Federal Rules of Civil Procedure.

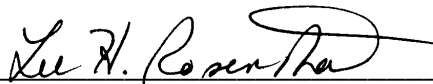
Rule 15(a) states that a party may amend the party's pleading once without seeking leave of court or the consent of the adverse party at any time before a responsive pleading is served. After a responsive pleading is served, a party may amend only by "leave of court or by written consent of the adverse party." *Id.* Vlasek did not obtain the defendants' consent or this court's leave before filing her amended pleading. The amendment adds an additional claim, for sex discrimination.

Although leave to amend pleadings "shall be freely given when justice requires," FED. R. CIV. P. 15(a), leave to amend "is not automatic." *Matagorda Ventures Inc. v. Travelers*

Lloyds Inc. Co., 203 F.Supp.2d 704, 718 (S.D. Tex. 2000) (citing *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981)). A district court reviewing a motion to amend pleadings under Rule 15(a) may consider factors such as “whether there has been ‘undue delay, bad faith or dilatory motive . . . undue prejudice to the opposing party, and futility of amendment.’” *Jacobsen v. Osborne*, 133 F.3d 315, 318 (5th Cir. 1998) (quoting *In re Southmark Corp.*, 88 F.3d 311, 314-15 (5th Cir. 1996)). Because Vlasek did not move for leave to amend, the defendants could not oppose the amendment, and this court could not evaluate the factors that apply.

The motion to strike is granted. Vlasek may move for leave to amend no later than June 1, 2007.

SIGNED on May 21, 2007, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge